IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 152 OF 1993

The State of Maharashtra ..Appellants

versus

Yashwant Vasudeo Upadhye ..Respondent

AND

FIRST APPEAL NO. 153 OF 1993

The State of Maharashtra ..Appellants

versus

Prakash Saromal Jain ..Respondent

AND

FIRST APPEAL NO. 313 OF 1993

Yashwant Vasudev Ypadhya ..Appellant

versus

The Special Land Acquisition

Officer, Pen ..Respondents

AND

FIRST APPEAL NO. 73 OF 1993

Prakash Saromal Jain ..Appellant

versus

The State of Maharashtra ..Respondents

Mr. S. N. Gawade, AGP for the State.

Mr. G. V. Limaye, for Claimant in First Appeal Nos. 152 of 1993 and 313 of 1993.

Mr. Rajiv Patil with Seema Sarnaik for Claimant. in First Appeal Nos. 153 of 1993 and 73 of 1993

CORAM : D. G. DESHPANDE,J.

DATE : 22ND FEBRUARY,2005

ORAL ORDER :

1. All the four appeals arise out of a common judgment of the IVth Additional District Judge, Raigad at Alibag dated 17.7.1992. That judgment covers two L.A.R. Nos. 402 and 403 of 1987, two appeals have been filed by the State and two appeals have been filed by the claimants.

2. Those two References No. 402 and 403 of 1987 came to be decided by a common judgment because the purpose for acquisition of both the lands was common. The lands were acquired in one common land acquisition proceedings and the lands were adjacent and both the claimants requested the Reference Court to read the evidence commonly and to decide the Reference by a common judgment.

3. The land was acquired for Konkan Railway Project for joining the road between Bombay Goa National Highway and the Railway Station Nagothane. Notification under Section 4 was dated 23.8.1984 and the award was passed on 4.11.986. The claimants were not satisfied with the compensation awarded and therefore two different References. Claimants claimed Rs.8,000/- per guntha. The Reference Court awarded Rs.1,700/- per guntha i.e. Rs.17/- per sq. meter. According to the State, the compensation awarded is higher, and according to the claimants in their respective appeals the compensation awarded is lower.

4. In paragraph 9 sub paragraph 12 the court considered two aspects, i.e. plus factor and the minus factor. Following are the plus factors :

. 1. Smallness of size.
. 2. Proximity to a road
. 3. Frontage on a road
. 4. Nearness to developed locality
. 5. Regular shape
. 6. Level Vis-a-vis.
. 7. Special value for an owner of an adjoining property to whom it may have some very special advantage.

The minus factors are as under:

1. Largeness of area
2. Situation in the interior at a distance from the road.
3. Narrow strip of land with very small frontage compared to depth.
4. Lower level requiring the depressed portion to be filled up.
5. Remoteness from developed locality
6. Some special disadvantageous factor which would deter a purchaser.

5. Claimants relied upon six sale instances as enumerated in paragraph 12 of the judgment of the Reference Court. Out of these, only one Reference is of the period prior to the Notification under Section 4 and other sale instances are subsequent thereto. The court however observed that both the lands under Reference are situate in between Bombay Goa National Highway and Railway Station of Nagothane, from Nagothane Railway Station Highway is at about 200 meters distance and between this strip of lands the acquired land was situate. Nagothane Railway Station is at about 1 1/2 km. distance, IPCL is at about 1 km. distance. There was a saw mill adjoining this land and the court came to the conclusion that the lands were situate at a very important location, it could be utilized for

commercial and industrial purpose having National potentiality. The court also considered that there was one disadvantage, viz. that the land being closed to National Highway there were restrictions of construction and for that purpose claimant have to keep open some part of the lands that is about 15 to 30 meter.

6. The claimants examined Jeevan Kulkarni, who has submitted his report at Exhibit 22. According to his evidence the Government of India has announced the Project known as IPCL based on gas which was available from Arabian sea. The actual work was started in 1983 and it was decided to acquire about 750 Hectares of land. IPCL project was situate at l k.m. away from the land under reference, and, therefore because of this declaration of the project, the price of lands had increased.

7. The claimants tendered on record merely certified copies of sale instances and agreements of sale but they did not examine any seller or purchaser. Excepting the first sale instance dated 17.4.1984 wherein 300 sq. meters of land was sold for Rs.12,000/- rate per sq. foot being Rs.40/-. But the Reference Court has rightly held that to gain advantage from the sale deeds so brought on

record, it was necessary for the claimants to examine the vendor and vendee because it was only the oral evidence of either the vendor or vendee that there could have been some light on the quality of the land which was the subject matter of the sale, their location and potentiality, and they were willing purchasers and buyers, and the purpose of buying the land. In these circumstances of the matter the court had to rely upon one sale deed dated 17.4.1987 because that was prior to the date of notification under Section 4. Sale deeds subsequent to the said notification were rightly not considered by the Reference Court. Regarding the sale deed the court found that it was only in respect of very very small portion of land i.e. 300 sq. meters and therefore that price of Rs.40/- per sq.meter could not be taken into consideration in the instant case. The court came to the conclusion that the acquired land is of good NA potentiality and the price awarded by the SLAO was not adequate. It also came to the conclusion that the price of Rs.8,000/- per guntha demanded by the claimant was also not justified nor proved. The Reference Court therefore fixed compensation at Rs.1,700/- per guntha.

8. From the evidence of the claimant and his expert Jeevan Kulkarni, it is clear that the

acquired land has big non agricultural potentiality, they are adjacent to and frontage of National Highway No.17 i.e. Bombay Goa Road or Bombay Panaji Highway. They are between railway line and the Highway, it is situate in Village Nagothane and exactly between National Highway No.17 and Bombay Konkan Railway, the distance between Railway and Highway is 500 ft. only. The claimant has stated in his evidence that further the land is plain does not require any development expenditure, the saw mill of the claimant Prakash in First Appeal No. 153 of 1993 and 73 of 1993 was adjacent to the land and to the north of this land there was a biscuit factory.

9. This court had in First Appeal Nos. 695 of 1992 and others relied upon the Judgment of the Division Bench of this court in Group of Appeals, viz. Appeal No. 875 of 1985 and others, wherein the proximity of the land to the National Highway was one of the most important consideration. The Division Bench has on the basis of the proximity fixed the land value between Rs.17 to Rs.25/- per sq. meter. Therefore, considering the situation of this land, compensation awarded by the Reference Court is required to be enhanced and as such on the basis of the aforesaid ratio of the Division Bench Rs.30/- per sq. meter or Rs.3,000/- per guntha

would be a proper valuation.

10. Learned AGP further contended that in view of the Judgment of the Supreme Court reported in **(2004) 4 Supreme Court Cases 79 R. L. Jain (D) by LRs. vs. DDA and others**, that the claimants are not entitled to any interest and according to him if at all possession is taken prior to the date of Notification then as per paragraph 18 of the aforesaid judgment, the claimants can go before the Collector and claim damages. Paragraph 18 of the Judgment is as under:

> **"In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and eqjuitable**

that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensatkion amount payable to the landowner for the acquiisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded."

11. As against this, counsel for the claimants contended that in fact proper reading of the aforesaid paragraph will show that it was the duty of the Collector to award damages to the claimants for taking possession before Notification. In this case date of notificatiion is 23.8.1984 and the possession is taken on 17.10.1983 and therefore while fixing compensation, the Collector should have given damages. He however contended that now after so many years it would not be proepr to ask the claimants to approach the Collector for seeking damages, but claimants would be satisfied if instead interest is awarded to them. He contended that even if now matter goes back to the Collector for fixing damages, the State will have to bear interest for delayed payment.

12. I find justification in the submissions made by the counsel for the claimants. Admittedly for the period between the date of Notification and taking possession, no damages have been awarded to the claimants, to which the claimants were actually entitled to, in view of the aforesaid judgment of the Supreme Court. Therefore, if the matter is remanded, the Collector will have to fix the amount of damages and the State will have to pay that amount along with interest from the date of taking possession till today. Instead of doing that, the claimants can be adequately compensated by awarding interest.

11. In the result, I pass the following order:

ORDER

. Appeals filed by the State are dismissed.

. Appeals filed by the claimants are partly allowed.

. Judgment of the Reference Court is modified. The claimants will be entitled to compensation at the rate of Rs.3,000/- per guntha in respect of the acquired land. Consequently, claimants will be entitled to recover difference between Rs.1,700/- to

Rs.3,000/- from the State. The claimants will also be entitled to 9% interest on the enhanced amount from the date of possession.

. No order as to costs.

22.2.2005 (D.G. DESHPANDE,J.)